

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ISABEL R. PUMPIDO and DEPARTMENT OF TREASURY,  
U.S. CUSTOMS SERVICE, Miami, FL

*Docket No. 98-784; Submitted on the Record;  
Issued February 2, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition in the performance of duty.

On August 21, 1997 appellant, then a 30-year-old supervisory inspectional aide, filed a claim for a traumatic injury, Form CA-1, based on an emotional condition.

In a statement accompanying the form, appellant indicated that she had experienced a traumatic incident on August 5, 1997 when, at the behest of the employing establishment, she was summoned to a meeting with four of her employees who had filed discrimination complaints against her. Appellant alleged that she was verbally assaulted, harassed and falsely accused during the meeting by both the employees and the employing establishment for approximately four hours, resulting in her experiencing a severe anxiety attack and, subsequently, a nervous breakdown, which required the assistance of paramedics. Appellant stated that, since this meeting, she had been receiving medical treatment.

In support of her claim, appellant submitted an August 20, 1997 report from Dr. Jesus S. Rodriguez, a specialist in psychiatry, who examined appellant on the date of the report and diagnosed major depressive disorder and job stress.

By letter dated September 15, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence she submitted was not sufficient to determine whether she was eligible for compensation benefits, and that she needed to submit a detailed description of the specific employment-related conditions or incidents she believed contributed to her illness. The Office also asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether factors or incidents, *i.e.*, specific employment factors, at her employing establishment contributed to her condition.

In response to appellant's claim, the employing establishment submitted statements from three witnesses who had attended the August 5, 1997 meeting.

An Equal Employment Opportunity (EEO) manager asserted in a September 7, 1997 statement that the meeting was convened by an EEO specialist to promote alternate dispute resolution. She stated that she acted as logistics coordinator and answered questions at the meeting, and provided a general description of what occurred. She did not indicate whether or not appellant was subjected to verbal harassment, but did state that appellant became agitated sometime during the proceedings.

The chief inspector of appellant's division at the employing establishment submitted a statement dated September 4, 1997. She stated that the meeting was convened because four employees had filed a discrimination complaint against appellant, and that the purpose of the meeting was for the EEO specialist to introduce and explain the concept of mediation or early investigation/resolution process. The chief inspector indicated that the meeting was attended by EEO personnel, employing establishment management, union officials, and four members of appellant's staff. She stated that the forum provided for group and individual meetings, and gave the complainants an opportunity, in a nonadversarial forum, to state their account of the facts relating to the alleged discrimination; appellant was to be provided with an opportunity to respond. The chief inspector stated, however, that prior to appellant's response, she became agitated, complained that the process was unfair and insisted that she should not be required to remain. She related that, although appellant was initially convinced to sit for the entire session, she again became agitated, fled the room, and departed to her office, where she was observed crying and shouting. The chief inspector stated that paramedics were called and appellant was given a physical examination, which was normal, although she asserted that it was apparent that appellant was upset.

An EEO specialist submitted an undated statement in which she indicated she was the primary speaker at the August 5, 1997 meeting, and that she had instructed the participants to exercise courtesy and respect and listen to the other participants. She also stated that she advised appellant she would have an opportunity to respond to the allegations made against her. The EEO specialist corroborated the chief inspector's assertion that, after a few initial sessions, appellant became visibly upset and indicated her intention to withdraw from the meetings. She stated that she followed appellant to her office, where she appeared highly agitated to the point where she removed her glasses and threw them onto the floor, and that it became necessary for appellant's supervisor to request medical assistance.

Appellant subsequently submitted a September 3, 1997 report from Dr. Rodriguez, who advised that he was currently treating appellant for major depressive disorder due mostly to her job.

By decision dated October 17, 1997, the Office found that fact of injury was not established, as the evidence of record did not establish that an injury was sustained in the performance of duty. The Office stated that the witnesses' statements did not support appellant's perception that she was harassed, verbally assaulted or ridiculed at the August 5, 1997 meeting, and that her mere perceptions were not compensable under the Federal Employees'

Compensation Act.<sup>1</sup> Accordingly, the Office found that appellant had failed to establish specific factors of employment to which she attributed her alleged disability, and it therefore denied appellant compensation for her alleged emotional condition.

By letter dated October 29, 1997, appellant requested reconsideration. In support of her claim, appellant submitted an October 14, 1997 statement in which she indicated that she had no prior notice of the August 5, 1997 meeting, and was therefore unprepared and taken by surprise. Appellant also alleged that her request to be represented by an attorney was refused. In addition, appellant reiterated her earlier allegations pertaining to the August 5, 1997 meetings.

By decision dated November 25, 1997, the Office affirmed its prior decision, finding that appellant failed to submit evidence sufficient to warrant modification.

The Board finds that this case is not in posture for decision.

To establish that an emotional condition was sustained in the performance of duty there must be factual evidence identifying and corroborating employment factors or incidents alleged to have caused or contributed to the condition, medical evidence establishing that the employee has an emotional condition, and rationalized medical opinion establishing that compensable employment factors are causally related to the claimed emotional condition.<sup>2</sup> There must be evidence that implicated acts of harassment or discrimination did, in fact, occur supported by specific, substantive, reliable and probative evidence.<sup>3</sup>

The first issue to be addressed is whether appellant has cited factors of employment that contributed to her alleged emotional condition or disability. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>4</sup> On the other hand, disability is not covered where it results from an employee's fear of a reduction-in-force, frustration from not being permitted to work in a particular environment or to hold a particular position, or to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute a personal injury sustained while in the performance of duty within the meaning of the Act.<sup>5</sup>

The Board finds that appellant has established a compensable factor of employment, *i.e.*, the requirement that she attend and participate in the EEO meeting on August 5, 1997. Although the processing of an EEO claim is not, of itself, compensable, appellant's attendance and

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Debbie J. Hobbs*, 43 ECAB 135 (1991).

<sup>3</sup> See *Ruth C. Borden*, 43 ECAB 146 (1991).

<sup>4</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>5</sup> See *id.*

participation in the dispute resolution meeting became a requirement imposed by her employment.<sup>6</sup>

However, appellant's burden of proof is not discharged by the fact that she has established a compensable employment factor which may give rise to disability under the Act. Appellant also has the burden of submitting sufficient medical evidence to support her claim that this factor resulted in an employment-related emotional condition.<sup>7</sup> In the instant case, appellant has submitted supporting medical evidence in the present case; *i.e.*, Dr. Rodriguez's August 20 and September 3, 1997 reports, which indicated that appellant was suffering from major depressive disorder, primarily due to employment-related stress. Although the medical evidence submitted by appellant is not sufficient to meet appellant's burden of proof, it is sufficient to raise an uncontroverted inference that identified factors of her federal employment may have contributed to her alleged emotional condition or disability, and is sufficient to require further development of the record.<sup>8</sup>

On remand, therefore, the Office should further develop the medical evidence as is appropriate. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated November 25 and October 17, 1997 are set aside and the case is remanded for further action in accordance with this decision.

Dated, Washington, D.C.  
February 2, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>6</sup> See *Larry J. Thomas*, 44 ECAB 291 (1992).

<sup>7</sup> *Chester R. Henderson*, 42 ECAB 352 (1991).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).